

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.67 OF 2017
WITH
CRIMINAL APPLICATION NO.68 OF 2017
IN
CRIMINAL APPEAL NO.31 OF 2017**

Ravindra @ Chhotu Subhash Gaware)...Applicant

**V/s.
State Of Maharashtra)...Respondent**

Mr. S.R.Gaud with M.R.Gowd, Advocates for the Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 15th MARCH, 2017.

P.C. :

These are applications for suspension of sentence and releasing the Applicant-Accused on bail during the pendency of the Appeal filed by him. The trial Court has held the Applicant-Accused guilty of the offence punishable under Sections 18 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 and he has been sentenced to suffer RI for 7 years. For the offence punishable under Section 342 of the IPC on

conviction, he is sentenced to suffer SI for six months. On conviction for the offence punishable under Section 8 of the POCSO Act, 2012, the applicant-accused is sentenced to suffer RI for 3 years. Apart from jail sentences, fine has also been levied on the applicant-accused apart from direction to pay compensation to the victim boy.

2 Heard learned Advocate appearing for the Applicant-Accused. By placing reliance upon the judgment of this Court in the matter of **Sujit Borkar v. State of Maharashtra** reported in **2016(4) Bombay C.R.(Criminal) 759**, the learned Advocate argued that birth certificate tendered across the bar was accepted by the learned Trial Court to hold that the victim is a child for convicting the Applicant-Accused of the offence punishable under the sections 4 and 8 of POCSO Act. It is further argued that evidence of the victim boy suffers from various infirmities. He had not stated either to the police or to the Magistrate that the Applicant-Accused was standing near his house, he has pushed the victim boy on the bed and that he had threatened that he will burn hand of the victim boy. It is further argued that mother of the

victim boy was sitting in the chamber of the learned Magistrate while recording his statement under Section 164 of the Cr.P.C. As such, victim boy has been tutored by his mother to depose against the Applicant-Accused. It is further argued that father of the victim boy is a reporter having access to police and he was on enemical terms with the Applicant-Accused. There is delay of about a week in narrating incident to the father of the victim boy and the date of alleged incident has not been come on record. It is further argued that evidence of P.W.4-Dr. Prabhat Kumar indicates possibility of causing injury to the victim boy because of non maintaining hygiene by him. There was enmity between the Applicant-Accused and father of the alleged victim boy causing false implication of the Applicant-Accused in the crime in question.

3 The learned APP opposed the Application by contending that evidence on record does not indicate any enmity and mere suggestions given to the father of the victim boy were denied by the witness. The learned APP further argued that evidence of the victim boy is corroborated by the medical evidence

on record.

4 I have carefully considered the rival submissions and also perused the copies of deposition of witnesses examined by the prosecution as well as impugned judgment and order.

5 So far as age of the victim boy is concerned, his oral evidence as well as evidence of his father consistently shows that date of birth of the victim boy was 16.5.2002. There is nothing in cross-examination of both these witnesses to infer that date of birth is wrongly deposed by both these witnesses. It is seen that photo-copy of the birth certificate was already on record and original thereof came to be tendered during the course of evidence and the same is marked as Exhibit 23. Birth certificate issued under the Registration of Births and Deaths Act, 1969 by the Registering Authority is a public document and is always proved by production of document before the Court itself. In the cited case of **Sujit Borkar (Supra)** what was before the trial Court was bonafide certificate issued by the school. In the case in hand, certificate was a birth certificate issued under the statute and as such, at this stage, it cannot be said that the said certificate is

required to be proved by adducing oral evidence regarding contents of that certificate.

6 So far as alleged incident is concerned, it is the case of the prosecution that father of the victim boy came to know that his son is molested by the Applicant-Accused and, therefore, he questioned his son and then his son revealed the facts to him. On this aspect, evidence of P.W.2-father of the victim boy is clear.

7 P.W.1-Victim boy in his evidence deposed the mode and the manner in which he was subjected to molestation by the Applicant-Accused. Omissions such as place of standing of the Applicant-Accused, minute details of the act and consequent threatening does not go to the root of the prosecution case. Core of the prosecution case is the act allegedly committed by the Applicant-Accused on the victim boy. There is no omission on this aspect.

8 So far as false implication is concerned, theory sought to be propounded is verbal altercations between the Applicant-Accused and P.W.2-Father of the victim boy over the issue of proposed marriage of the Applicant-Accused with a woman named

Rohini. There are suggestions to this effect which are denied by P.W.2-Father of the victim boy. The other reason is so-called strained relations of the Applicant-Accused with one Vishal More and suggestions to that effect are also denied by P.W.2-Father of the victim boy. Question will be whether father will stake future of his adolescent boy by baiting him for leveling false allegations of sexual molestation for settling his alleged score with the Applicant-Accused. There is no iota of evidence to that effect on record. Hence, at this stage, it is not possible to conclude that there is false implication of the Applicant-Accused in the crime in question.

9 Considering the nature of offence and the fact that at-least one Court has come to conclusion that offence alleged is proved, no case for bail is made out. Hence, both the applications are rejected. Hearing of the appeal is expedited in its category.

(A. M. BADAR, J.)